

CATHERINE CORTEZ MASTO
Nevada Attorney General
J. MARTY HOWARD
Senior Deputy Attorney General
Nevada Bar No. 1052
STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
555 E. Washington Ave., #3900
Las Vegas, NV 89101
Telephone: (702) 486-3267
Fax: (702) 486-3773
Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

JOHN MICHAUD

Plaintiff,

v.

DR. ROBERT BANNISTER and BRIAN
WILLIAMS,

Defendants.

Case No.: 2:08-cv-01371-RCJ-PAL

MOTION FOR ENLARGEMENT OF TIME
(SECOND REQUEST)

COME NOW Defendants, DR. ROBERT BANNISTER and BRIAN WILLIAMS, by and through their counsel, CATHERINE CORTEZ MASTO, Attorney General, and J. MARTY HOWARD, Senior Deputy Attorney General, of the State of Nevada, Office of the Attorney General, and hereby respectfully submit the instant MOTION FOR ENLARGEMENT OF TIME (SECOND REQUEST) in the above-referenced matter.

Counsel would request this Honorable Court reconsider its Order (CR 33) as this case involves a Pro Se Inmate. LR 16-1 and Fed. R. Civ. P. 26 exempt the Parties from filing a Joint Discovery Plan and Scheduling Order.

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1 This Motion is brought pursuant to Fed.R.Civ.P. 6(b), LR 6-2, the attached Points and
2 Authorities, and the papers and pleadings on file with the Court herein.

3 DATED this 25th day of October, 2011.

4 Respectfully submitted,
5 CATHERINE CORTEZ MASTO
6 Attorney General

7 By: 
8 J. MARTY HOWARD
9 Deputy Attorney General
10 Public Safety Division

11 POINTS AND AUTHORITIES

12 I. LEGAL ARGUMENT

13 Fed.R.Civ.P. 6(b)(1)(B) provides, in pertinent part:

14 (b) *Extending Time.*

15 (1) *In General.* When an act may or must be done within a
16 specified time, the court may, for good cause, extend the time:
(B) on motion made after the time has expired if the party failed
to act because of excusable neglect[.]

17 Rule 6(b)(1) allows for a party to move for an enlargement of time, the determination of
18 which lies with the presiding court. "The Court has inherent power and discretion to control its
19 docket, and the proceedings within the cases on its docket." *Ford v. County of Missoula,*
20 *Mont.*, 2010 WL 2674036, 1 (D.Mont., 2010) (citing *Landis v. North American Co.*, 299 U.S.
21 248, 254 (1936); see also Fed.R.Civ.P. 6(b) (advisory committee note, 1946) ("Rule 6(b) is a
22 rule of general application giving wide discretion to the court to enlarge these time limits or
23 revive them after they have expired . . .").

24 Defendants are requesting an enlargement of time to file their Proposed Discovery Plan
25 and Scheduling Order pursuant to this Court's Order (Doc 33) as the August 21, 2011
26 deadline has expired. Defendants are making this request based upon good cause to allow
27 newly assigned counsel to become familiar with the matters currently pending before this
28 Court.

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

1 This Motion is based upon the affidavit of counsel attached hereto as Exhibit "A",
2 counsel, Senior Deputy Attorney General J. Mary Howard, was recently assigned as lead
3 counsel on this case.¹ In addition to the instant matter, undersigned counsel has recently
4 been assigned approximately 21 ongoing litigation cases and is also receiving assignments of
5 newly filed litigation cases. I have other matters and cases which need my immediate
6 attention to meet impending deadlines.

7 A first request Motion for Enlargement of Time was filed on September 21, 2011 (CR
8 38). Subsequently, Counsel has been working with Plaintiff to settle this case. The parties
9 filed a Stipulation and Order on October 3, 2011 (CR 41) to stay this matter during the time of
10 settlement negotiations. Plaintiff informed me on or about Friday, October 14, 2011 he no
11 longer wanted to abide to the terms to which we had an apparent agreement. It was my good
12 faith belief we were only \$200.00 apart.

13 Based upon the foregoing, Defendants respectfully request a 21-day enlargement of
14 time from October 21, 2011 in which to file the parties Proposed Discovery Plan and
15 Scheduling Order to and including November 14, 2011. This request is made in good faith
16 and not for purposes of delay. It should be noted I will be attempting to work with an inmate
17 who is incarcerated. This often proves difficult due to various reasons including but not limited
18 to their incarceration.

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Lead Counsel¹ See Notice of Change of I filed herein on August 16, 2011 (Doc. 34)


1 **III. CONCLUSION**

2 Because good cause has been shown, Defendants respectfully request the Court to
3 enlarge the time by which they must file a Proposed Discovery Plan and Scheduling Order
4 pursuant to this Court's Order (Doc 33), by 21 days from October 21, 2011 to November 14,
5 2011.

6 Dated this 25th day of October, 2011.

7 Respectfully submitted,

8 CATHERINE CORTEZ MASTO
9 Attorney General

10 By: 
11 J. MARTY HOWARD
12 Deputy Attorney General
13 Nevada State Bar No. 1052
14 Public Safety Division

15 "IT IS SO ORDERED:

16 
17 UNITED STATES DISTRICT JUDGE,

18 DATED: 11-16-2011 _____"

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Office of the Attorney General and that on the 25th day of October, 2011, I served the foregoing **MOTION FOR ENLARGEMENT OF TIME (SECOND REQUEST)** by causing a true and correct copy thereof to be filed with the Clerk of the Court using the CM/ECF system and by causing a true and correct copy thereof to be delivered to the Department of General Services, for mailing at Las Vegas, Nevada, addressed to the following:

JOHN MICHAUD #40734
SOUTHERN DESERT CORRECTIONAL CENTER
PO BOX 208
INDIAN SPRINGS NV 89070

/s/ Michele Caro
An employee of the Office of the Attorney General

Attorney General's Office
555 E. Washington, Suite 3900
Las Vegas, NV 89101

EXHIBIT A

EXHIBIT A

DECLARATION J. MARTY HOWARD

STATE OF NEVADA)
) ss:
 COUNTY OF CLARK)

Affiant, J. MARTY HOWARD, being first duly sworn, hereby states that:

I present this Affidavit in support of a Motion for Enlargement of Time (Second Request) in the United States District Court, District of Nevada Case No. 2:08-cv-01371-RJC-PAL, *John Michaud v. State of Nevada, Dr. Robert Bannister, et. al.*; I have personal knowledge of and am competent to testify regarding the matters stated in this Declaration.

I am an attorney licensed to practice in the State of Nevada and I am admitted to practice in the United States District Court for the District of Nevada.

I am currently employed as a Senior Deputy Attorney General at the Nevada Office of the Attorney General, Bureau of Litigation, Public Safety Division, NDOC Unit, in Las Vegas Nevada, and have been assigned to represent Defendants in the United States District Court, District of Nevada Case No. 2:08-cv-01371-RJC-PAL, *John Michaud v. Robert Bannister, et. al.* The Notice of Change of Lead Counsel (Doc. 34) was served and filed on August 16, 2011.

On July 26, 2011, this Honorable Court filed its Order (Doc. 33). Accordingly, the parties were required to file and serve their Proposed Discovery Plan and Scheduling Order on August 21, 2011. Defendants requested this Court to reconsider its Order as this case involves a Pro Se inmate. LR 16-1 and Fed. R. Civ. P. exempt the Parties from filing a Joint discovery Plan and Scheduling Order.

I finally had an opportunity to review the file which was provided to me in this matter. I noted this case had been remanded from the Ninth Circuit Court of Appeals. I decided to attempt to determine whether this case could be resolved through settlement negotiations. I personally drove to the SDCC (prison) and met with Plaintiff. The first meeting was promising

1 and it appeared we were only \$200.00 apart as well as my needing to obtain approval to
2 provide Plaintiff with specialized glasses.

3 Plaintiff and Defendants filed a Stipulation and Order on October 3, 2011 (CR 41)
4 requesting a stay of this matter until October 21, 2011 pending the settlement negotiations. I
5 personally met with the Director of Prisons and spoke with and corresponded with the
6 Defendants including the Medical Director Dr. Bannister. I obtained the necessary approvals
7 from NDOC to attempt to settle this matter. I drafted another Motion to Stay and forwarded it
8 to the Plaintiff. I set up a telephone conference with Plaintiff on October 21, 2011 to inform
9 him of the good news. However, he informed me he had changed his mind and now wanted
10 substantially more money.
11

12 Therefore, it now appears this matter must be litigated. I need time to address my
13 other cases which have impending deadlines. I now need time to carefully review the file in
14 this matter and determine how to proceed. I have not drafted a joint Proposed Discovery Plan
15 and Scheduling Order with an inmate before as this is usually exempted by the rules.
16

17 I continue to attempt to catch up with all the older and newer cases assigned to me as I
18 just somewhat recently transferred from the Nevada Department of Transportation to the
19 Litigation division.

20 I obtained furniture in my office on September 1, 2011. My personal belongings were
21 in boxes including, but not limited to, my legal books and materials. Until I received my
22 furniture on September 1, 2011, my resources were limited. I recently was assigned a new
23 secretary and we continue the process of creating hard case files from computer case files
24 kept by the previously assigned attorney. Unfortunately, this has proven to be administratively
25 burdensome and difficult.
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1 As such, I am respectfully requesting an additional 21 day extension in this matter to
2 gather information, carefully review the file, conduct legal research, and prepare a meaningful
3 Joint Proposed Discovery Plan and Scheduling Order as well as determining the proper
4 litigation strategy to follow.

5 This is the second request for an extension being made by, and on behalf of,
6 Defendants ROBERT BANNISTER and BRIAN WILLIAMS in this matter.

7
8 FURTHER AFFIANT SAYETH NAUGHT.

9 DATED this 25th day of October, 2011.

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13 SUBSCRIBED AND SWORN to before
14 me this 25th day of October, 2011.


MARTY HOWARD

15 
16 NOTARY PUBLIC in and for
17 said County and State.

